

APPENDIX II-C

**RULEMAKING NOTICE FORM**

Notice Number 2021-127 Rule Number He-W 568

<p>1. Agency Name &amp; Address:</p> <p><b>Dept. of Health and Human Services Division of Family Assistance 129 Pleasant St., Brown Bldg. Concord, NH 03301</b></p>	<p>2. RSA Authority: <u><b>RSA 161:4-a, X</b></u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption <u><b>X</b></u></p> <p>Readoption w/amendment <u><b>X</b></u></p>
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5. Short Title: **Physical Therapy, Occupational Therapy and Services For Individuals With Speech, Hearing, and Language Disorders**

6. (a) Summary of what the rule says and of any proposed amendments:

**He-W 568 specifies recipient eligibility, service limitations, covered services, and provider payment in relation to physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.**

**The Department of Health and Human Services (Department) is proposing to readopt with amendments He-W 568.01 on definitions, He-W 568.04 on service limits, He-W 568.07 on utilization review and control, He-W 568.08 on third party liability, and He-W 568.10 on payment for services. The amendments:**

- **Update the service limits for physical therapy, occupational therapy, and services for speech, hearing, and language disorders from 80 units per recipient per state fiscal year to 20 visits per recipient per state fiscal year;**
- **Reflect the current use of language regarding utilization review and control. The associated federal regulations were added to the Appendix;**
- **Reflect current use of language regarding third party liability; and**
- **Reflect current use of language regarding billing.**

**The proposal readopts without change He-W 568.02 on recipient eligibility, He-W 568.03 on provider participation, He-W 568.05 on covered services, He-W 568.06 on prior authorization, and He-W 568.08 on documentation.**

6. (b) Brief description of the groups affected:

**Medicaid beneficiaries that receive physical therapy, occupational therapy, and services for Medicaid beneficiaries with speech, hearing, and language disorders.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Specific State or Federal Statute or Regulation the Rule Implements
He-W 568.01	RSA 161:4-a, IX
He-W 568.02	42 CFR 440.210; 42 CFR 440.220; 42 CFR 440.225
He-W 568.03	42 CFR 440.110
He-W 568.04	42 CFR 440 Subpart B
He-W 568.05	42 CFR 440.10
He-W 568.06	42 CFR 440.110
He-W 568.07	42 CFR 455; 42 CFR 456; 42 CFR 1001
He-W 568.08	42 CFR 440.10
He-W 568.09	42 CFR 433.139
He-W 568.10	42 CFR 447 Subpart B

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Nicole Burke**

Title: **Rules Coordinator –  
Administrative Rules Unit**

Address: **Dept. of Health and Human Services  
Administrative Rules Unit  
129 Pleasant Street, 2<sup>nd</sup> Floor  
Concord, NH 03301**

Phone #: **(603) 271-9640**

Fax#: **(603) 271-5590**

E-mail: [Nicole.V.Burke@dhhs.nh.gov](mailto:Nicole.V.Burke@dhhs.nh.gov)

TTY/TDD Access: Relay NH 1-800-735-2964  
or dial 711 (in NH)

**The proposed rules may be viewed and downloaded at:**

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Friday, January 14, 2022**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, January 7, 2022 at 11:00 am**

Place: [\*\*DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH\*\*](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 21:130, dated 12/1/2021

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rule to the existing rule.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rule He-W 568 modifies an existing program or responsibility, but does not mandate any fees, duties, or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**

PART He-W 568 PHYSICAL THERAPY, OCCUPATIONAL THERAPY AND SERVICES FOR INDIVIDUALS WITH SPEECH, HEARING AND LANGUAGE DISORDERS

**Readopt with amendment He-W 568.01, effective 12-16-11 (Document #10042), as amended effective 7-1-12 (Document #10139), to read as follows:**

He-W 568.01 Definitions.

- (a) “Department” means the New Hampshire department of health and human services.
- (b) “Medicaid” means the Title XIX and Title XXI programs administered by the department which makes medical assistance available to eligible individuals.
- (c) “Modalities” means methods of prescribed therapy.
- (d) “Occupational therapy (OT)” means “occupational therapy” as defined in RSA 326-C:1, III.
- (e) “Occupational therapy assistant” means “occupational therapy assistant” as defined in RSA 326-C:1, IV.
- (f) “Physical therapy (PT)” means the “practice of physical therapy” as defined in RSA 328-A:2, XI.
- (g) “Physical therapy assistant” means “physical therapy assistant” as defined in RSA 328-A:2, VIII.
- (h) “Recipient” means any individual who is eligible for and receiving medical assistance under the medicaid program.
- (i) “Services for speech, hearing and language disorders” means diagnostic, screening, preventive, or corrective speech-language pathology.
- (j) “Speech-language pathology (SLP)” means “speech-language pathology” as defined in RSA 326-F:1, IV.
- (k) “Speech-language assistant” means “speech-language assistant” as defined in RSA 326-F:1, II-a.
- (l) “Title XIX” means the joint federal-state program described in Title XIX of the Social Security Act and administered in New Hampshire by the department under the medicaid program.
- (m) “Title XXI” means the joint federal-state program described in Title XXI of the Social Security Act and administered in New Hampshire by the department under the medicaid program.
- ~~(n) “Unit” means a 15 minute period of time for which a service is rendered.~~
- ~~(n) “Visits” are defined by individual procedure codes.~~

**Readopt He-W 568.02 and He-W 568.03, effective 12-16-11 (Document #10042), to read as follows:**

He-W 568.02 Recipient Eligibility. All Title XIX recipients shall be eligible for physical therapy, occupational therapy, and services for speech, hearing and language disorders, in accordance with He-W 568.

He-W 568.03 Provider Participation.

(a) Each participating physical therapist, occupational therapist, and speech-language pathologist shall:

- (1) Be licensed by the state in which they practice; and
- (2) Be a NH enrolled Title XIX provider.

(b) Occupational therapy assistants, physical therapy assistants, and speech-language assistants shall not be eligible to enroll as a Title XIX provider but may provide services to Title XIX recipients in accordance with He-W 568.05 below.

**Readopt with amendment He-W 568.04, effective 12-16-11 (Document #10042), to read as follows:**

He-W 568.04 Service Limits.

(a) The service limits for physical therapy, occupational therapy, and services for speech, hearing and language disorders shall apply to all such services, regardless of whether these services are provided through a hospital outpatient department, another provider, such as a home health agency, or by the individual therapists.

(b) Physical therapy, occupational therapy, and services for speech, hearing and language disorders shall be limited to ~~80 units~~ 20 visits per recipient per state fiscal year.

(c) The 20 visits ~~80 units~~ described in (b) above may be used for physical therapy, occupational therapy, services for speech, hearing and language disorders, or any combination of these services.

**Readopt He-W 568.05 and He-W 568.06, effective 12-16-11 (Document #10042), to read as follows:**

He-W 568.05 Covered Services.

(a) Physical therapy, occupational therapy and services for individuals with speech, hearing and language disorders shall be covered when prescribed, in writing, by a physician or other licensed practitioner, for each recipient treated.

(b) Services in (a) above shall be covered:

- (1) When performed by the physical therapist, occupational therapist, or speech-language pathologist; or
- (2) When performed by a physical therapy assistant, an occupational therapy assistant, or a speech-language assistant working under the direction of a PT, OT, or SLP, as applicable and in accordance with applicable requirements in Phy 400, Occ 400, or Spe 600.

(c) When services are provided in accordance with (b)(2) above, the individual responsible for the oversight of the assistant shall, in addition to any applicable requirements in Phy 400, Occ 400, or Spe 600:

- (1) See the recipient first to conduct the initial assessment and develop a plan of care;
- (2) See the recipient periodically thereafter;
- (3) Specify the type of care to be provided by the physical therapy assistant, occupational therapy assistant, or speech-language assistant;
- (4) Review the need for continued services;

(5) Assume professional responsibility for services provided by the physical therapy assistant, occupational therapy assistant, or speech-language assistant; and

(6) Ensure that services provided are within the scope of the prescribed services.

(d) Hearing aid services and related auditory devices shall be covered subject to the requirements and limits in He-W 567.

He-W 568.06 Prior Authorization.

(a) The provider shall request prior authorization, as specified in He-W 530, for therapy services prescribed in excess of the limits described in He-W 568.04.

(b) Providers of hearing aid services and devices shall request prior authorization in accordance with He-W 567.

**Readopt with amendment He-W 568.07, effective 12-16-11 (Document #10042), to read as follows:**

He-W 568.07 Utilization Review and Control.

(a) The department's program integrity unit shall monitor utilization of physical therapy, occupational therapy and services for individuals with speech, hearing and language disorders, in accordance with 42 CFR 455, 42 CFR 456, 42 CFR 1001, and He-W 520 ~~and 42 CFR 456~~.

**Readopt He-W 568.08, effective 12-16-11 (Document #10042), to read as follows:**

He-W 568.08 Documentation.

(a) Therapy service described in He-W 568.05 above shall be documented, including:

- (1) The date of each therapy service provided;
- (2) The amount of time spent rendering each therapy service;
- (3) A description of the therapeutic modality used during the therapy service;
- (4) Measurable short-term and long-term goals;
- (5) Objectives of the therapy service provided;
- (6) Modalities to be utilized during the therapy service;
- (7) Frequency of therapy services prescribed;
- (8) An estimation of the duration of treatment;
- (9) Ongoing progress notes evaluating the recipient's progress in relation to the established goals and estimated duration of treatment; and
- (10) An indication as to whether the services provided were for individual or group therapy.

(b) The provider shall maintain records to support claims submitted for reimbursement for a period of at least 6 years from the date of service, or until the resolution of any legal action(s) commenced in the 6-year period, whichever is longer.

**Readopt with amendment He-W 568.09 and He-W 568.10, effective 12-16-11 (Document #10042), to read as follows:**

He-W 568.09 Third Party Liability. All third party obligations shall be exhausted before ~~claims shall be submitted to the department or its fiscal agent. Title XIX shall be billed;~~ in accordance with 42 CFR 433.139.

He-W 568.10 Payment for Services.

(a) Reimbursement to providers of physical therapy, occupational therapy and services for individuals with speech, hearing and language disorders shall be made in accordance with fee schedules established by the department, in accordance with RSA 161:4, VI(a).

(b) The provider shall bill by the appropriate procedure code ~~unit of service~~ and submit claims for payment to the department's fiscal agent.

(c) The provider shall maintain supporting records, in accordance with He-W 520 and He-W 568.08.

~~— (d) For billing purposes:~~

~~(1) Eight or more minutes of service provided shall constitute a full unit; and~~

~~(2) Fewer than 8 minutes of service provided shall not be billed.~~

(de) Providers shall submit claims for payment for services in accordance with the following:

(1) Only ~~units of~~ direct treatment by a therapist or a physical therapy assistant, occupational therapy assistant, or speech-language assistant shall be billed, meaning the time the therapist or physical therapy assistant, occupational therapy assistant, or speech-language assistant spends providing direct treatment to one recipient;

(2) Therapists working as a team to treat one or more recipients shall not each bill separately for the same or different service provided at the same time to the same recipient; and

(3) If a recipient requires co-treatment simultaneously by 2 therapists, visits will be the total ~~number of units shall be divided between the providers and~~ billed separately by each provider for the to equal the total time the recipient was receiving actual therapy services.

(ef) The time a recipient spends not being treated, for any reason, shall not be billed.

(fg) Services provided by a physical therapy assistant, occupational therapy assistant, or speech-language assistant, in accordance with He-W 568.05(b) and (c) above, shall be billed by the enrolled therapist providing oversight of the physical therapy assistant, occupational therapy assistant, or speech-language assistant.

Rule	Specific State or Federal Statute or Regulation the Rule Implements
He-W 568.01	RSA 161:4-a, IX
He-W 568.02	42 CFR 440.210; 42 CFR 440.220; 42 CFR 440.225
He-W 568.03	42 CFR 440.110
He-W 568.04	42 CFR 440 Subpart B
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